

MEMORANDUM

SUBJECT: West Lake Landfill/ Permanent Relocation

FROM: Jennifer Hackman

TO: David Hoefer

DATE: July 17, 2014

Question Presented: Under what circumstances does the EPA consider permanent relocation of residents under CERCLA?

Brief Answer: Because permanent relocation is considered a remedial action under the NCP, and does not have its own separate selection process, it must be selected based upon the nine criteria listed for selecting a clean-up remedy. (Those nine criteria are listed on page 2). Specifically, the EPA has presented four examples of instances that would warrant serious consideration of permanent relocation; 1. when structures must be destroyed because they block or interfere with cleanup, 2. when structures cannot be decontaminated to levels that are protective of human health, 3. When potential treatment would require unreasonable use restrictions rendering the treatment un-acceptable to the community, 4. When an alternative includes a temporary relocation expected to last longer than one year.

Background Information:

General Authority to Relocate:

- CERCLA section 101(24) grants explicit authority to conduct permanent relocations by defining remedial action to include, "...the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health..."
- the National Oil and Hazardous Substances Contingency Plan (NCP), which constitutes CERCLA's implementing regulations, states that, "[t]emporary or permanent relocation of residents, businesses, and community facilities may be provided where it is determined necessary to protect human health and the environment" (40 CFR section 300, App. D(g)).

General Remedy Information:

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2.0



Superfund

- The NCP (40 CFR section 300.430) establishes a remedy selection process to ensure that remedies meet the principal requirements of CERCLA section 121. Remedies must:
 - Protect human health and the environment;
 - Comply with applicable or relevant and appropriate requirements (ARARs) unless a waiver is justified;
 - Be cost-effective;
 - Utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and
 - Satisfy the preference for treatment as a principal element or justify why the preference was not met.

Permanent Relocation Consideration:

- Under the National Contingency Plan (NCP; EPA's Superfund regulations), relocation is considered a remedial action. Consequently, it only can be selected based upon the nine criteria for selecting a clean-up remedy set out in the NCP. In the policy, a decision was made to use the existing remedy selection process and criteria and not introduce specific criteria or requirements for relocations, giving EPA more flexibility in selecting relocation as part of a remedy.

Source: <http://www.epa.gov/superfund/community/relocation/mtgfinal.pdf>

- 9 Criteria under NCP:
 1. overall protection of human health and the environment;
 2. compliance with ARARs
 3. long-term effectiveness and permanence
 4. reduction of toxicity, mobility, or volume
 5. short-term effectiveness
 6. implementability
 7. cost
 8. State acceptance
 9. community acceptance

Specific Examples:

- The following list, although not inclusive, provides examples of the types of situations where permanent relocation may be considered. Generally, the primary reasons for conducting a permanent relocation would be to address an immediate risk to human health (where an engineering solution is not readily available) or where the structures (e.g., homes or businesses) are an impediment to implementing a protective cleanup. The examples are discussed in terms of how EPA could conduct an alternatives analysis

applying several of the NCP nine criteria, leading to the consideration of permanent relocation as an appropriate option:

1. Permanent relocation may be considered in situations where EPA has determined that structures must be destroyed because they physically block or otherwise interfere with a cleanup and methods for lifting or moving the structures safely, or conducting cleanup around the structures are not **implementable** from an engineering perspective. The methods may be technically unfeasible because they are too difficult to undertake or success may be too uncertain. Additionally, these methods may prove not to be cost-effective when compared with other alternatives that are protective of human health and the environment.
2. Permanent relocation may be considered in situations where EPA has determined that structures cannot be decontaminated to levels that are **protective of human health** for their intended use, thus the decontamination alternative may not be **implementable**.
3. Permanent relocation may be considered when EPA determines that potential treatment or other response options would require the imposition of unreasonable use restrictions to maintain protectiveness (e.g., typical activities, such as children playing in their yards, would have to be prohibited or severely limited). Such options may not be **effective in the long-term**, nor is it likely that those options would be **acceptable to the community**. For further discussion about developing remedial alternatives that include institutional controls see "Land Use in the CERCLA Remedy Selection Process."
4. Permanent relocation may be considered when an alternative under evaluation includes a temporary relocation expected to last longer than one year. A lengthy temporary relocation may not be **acceptable to the community**. Further, when viewed in light of the balancing of tradeoffs between alternatives, the temporary relocation remedy may not be practicable, nor meet the statutory requirement to be **cost-effective**. Additionally, a shortage of available long-term rentals within the immediate area, may make any potential temporary relocation extremely difficult to **implement**.

2. Source: <http://nsdi.epa.gov/superfund/community/relocation/intpol.htm>

2000 Dialogue Meeting:

- In March of 2000, The EPA convened a policy dialogue meeting to review, discuss, and receive input on EPA's Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions, which was issued on June 30, 1999. The policy dialogue took place at the facilities of the International City/County Management

Association (ICMA) in Washington, DC. Participants included representatives of EPA and other federal government agencies, state and municipal government agencies, grassroots citizens organizations, universities, relocation consultants and specialists, corporations, and others with a stake in the development of EPA's policy on Superfund-related relocations.

Here is a link to the document containing the entire dialogue:

- <http://www.epa.gov/superfund/community/relocation/mtgfinal.pdf>

Here are some comments I selected that could be relevant:

- The URA often focuses on issues other than those of importance to the community, such as costs to the government. The private sector focuses on bottom line costs. The needs of the community need to be taken into account. Relocation should not just be a question of property acquisition, it's a question of community welfare, especially for families on the fence line.
- As a general rule, the time period for temporary relocations should be limited to six months, not a year. Any temporary relocation longer than six months should be made a permanent relocation. The stress of staying in hotels or temporary housing for a long duration often can be significant. We need a firm recommendation on the period for temporary relocation.
- In general, the policy needs to be flexible enough to account for a variety of local situations, because conditions vary from site to site.
- Currently, the community involvement process is flawed. Now, the remedy decision already is made before community involvement occurs. The community has no input during the remedy selection process when relocation would first be considered. The involvement process needs to start from the beginning of the RI/FS when EPA is developing cleanup options. Once the RI/FS is complete, it is difficult to convince EPA or PRPs to reverse their decision.

Here are recommendations from that dialogue:

Recommendations:

- Relocation should be equally considered as an option for risk reduction.
- The initial assessment must evaluate removing people from harm's way.
- Define the Welfare Criteria and include:
 - Flexibility based on quality of life
 - Stress factors
 - Community viability for those remaining

- o Keep community whole
- o Risk perception
- o Security
- o Property value/stigma

Sources:

<http://www.epa.gov/superfund/community/relocation/modelsow.pdf>

<http://www.epa.gov/superfund/community/relocation/mtgfinal.pdf>

<http://nsdi.epa.gov/superfund/community/relocation/intpol.htm>